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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/809,814	03/26/2004	Suman Preet Singh Khanuja	US 1374/04	8540
7590 04/01/2008 Law Office - Dinesh Agarwal, P.C. Suite 330 5350 Shawnee Road Alexandria, VA 22312			EXAMINER	
			CALAMITA, HEATHER	
			ART UNIT	PAPER NUMBER
			1637	
			MAIL DATE	DELIVERY MODE
			04/01/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/809,814	KHANUJA ET AL.
	<b>Examiner</b> HEATHER G. CALAMITA	<b>Art Unit</b> 1637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If no period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED. (35 U.S.C. § 133).

Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 05 March 2008.

2a) This action is FINAL.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-12 is/are pending in the application.

4a) Of the above claim(s) 3-9 is/are withdrawn from consideration.

5) Claim(s) 3 is/are allowed.

6) Claim(s) 2 and 10-12 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/0256/06)  
Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

#### **DETAILED ACTION**

##### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on March 5, 2008, has been entered.

##### ***Status of Application, Amendments, and/or Claims***

2. Claims 1-12 are pending. Claims 3-9 are withdrawn as being directed to non-elected subject matter. Claims 1, 2, 10, 11 and 12 are under examination. Any objections and rejections not reiterated below are hereby withdrawn.

##### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 recites "The oligonucleotide as claimed in claim 1, wherein the domain is from 241 to 261 nucleotide position of *gyr A* gene from translation start site of *E. coli*. SEQ ID NO: 1 recited in claim 1 is 21 nucleotides long. The domain recited in claim 2 is 20 nucleotides in length. The relationship of the domain recited in claim 2 to SEQ ID NO: 1 in claim 1 is unclear.

##### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshida et al. (Mol

Gen Genet., 1988).

With regard to claims 10-12, Yoshida et al. teach SEQ ID NOs 3 and 4 (see p. 4 and the alignment below).

SEQ ID NO: 3 1 AATTTGCGACCTTGAATCCG 21

Yoshida et al. 137 AATTTGCGACCTTGAATCCG 157

SEQ ID NO : 4 1 CTGGGTCTGGGAGTAGAGGTTG 22

Yoshida et al. 1158 CTGGGTCTGGGAGTAGAGGTTG 1137

With regard to the rejections of claims 10-12 over Yoshida, Yoshida et al. teach the nucleotide sequences comprising SEQ ID NOs 3 and 4 respectively.

*Response to Arguments*

5. Applicants' arguments filed March 5, 2008 have been fully considered but they are not persuasive. Applicants arguments regarding claim 1 are persuasive. Yoshida does not teach an isolated oligonucleotide *consisting of* SEQ ID NO:1. With respect to claims 10-12, Applicants arguments are not persuasive because there is no recitation in these claims of *consisting of*. Additionally if Applicants amend to recite the language *consisting of*, these are primer sequences for a known gene and therefore it is well known by a skilled artisan how to chose primers for a known sequence. In the absence of unexpected results it would be obvious to chose primers for a known gene sequence.

*Allowable Subject Matter*

6. Claim 1 is allowed. SEQ ID NO:1 is free of the prior art.

***Correspondence***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Heather G. Calamita whose telephone number is 571.272.2876 and whose e-mail address is [heather.calamita@uspto.gov](mailto:heather.calamita@uspto.gov). However, the office cannot guarantee security through the e-mail system nor should official papers be transmitted through this route. The examiner can normally be reached on Monday through Thursday, 7:00 AM to 5:30 PM.

If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Gary Benzion can be reached at 571.272.0782.

Papers related to this application may be faxed to Group 1637 via the PTO Fax Center using the fax number 571.273.8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to 571.272.0547.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public. For more information about the PAIR system, see <http://pair-direct.uspto.gov>.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199

/Heather G. Calamita, Ph.D./  
Examiner, Art Unit 1637